



UNIVERSITY OF TORONTO
FACULTY OF LAW

BORA LASKIN LAW LIBRARY



3 1761 10075186 6

ADVANCED CORPORATE LAW & SECURITIES REGULATION

Cases and Materials

Professor Anita Anand
Faculty of Law
University of Toronto

Winter 2016

K
1330
.A953
2016
c.1

ADVANCED CORPORATE LAW
& SECURITIES REGULATION

Cases and Materials

Professor Anita Anand
Faculty of Law
University of Toronto

Winter 2016

ADVANCED CORPORATE LAW & SECURITIES REGULATION
LAW229H1F
Winter 2016

Professor Anita Anand
Room 301, Falconer Hall
416-946-4002
anita.anand@utoronto.ca
Class Location: Larkin Building, Room 341

Course Description

This course explores in greater depth topics explored in Business Organizations and Securities Regulation. Discussion and analysis will centre on contemporary issues in the regulatory regime, such as: corporate governance, securities offerings, acquisition transactions, enforcement issues and the role of the securities regulator. The focus of the course is on statutory and case materials combined with an analysis of relevant academic writings and other secondary materials. In general, the course seeks to integrate a sound understanding of securities regulation and corporate law doctrine with a critical understanding of the policy issues involved. To that end, the course will probe the various interests of relevant stakeholders as they pertain to the issues under discussion and the extent to which the law should protect these interests.

Materials

There will be readings assigned for each class. The readings will be available in a cerlox volume.

Evaluation

Students will write a three-hour examination.

Preparation for Class

In order to get the most out of the class discussion, please complete the assigned readings, bearing in mind the discussion questions that will be circulated prior to class.

Questions and Meetings

Over the course of the term, you may wish to ask me questions or to speak with me about the course material. Please feel free to raise your questions before or after class, via email or in person. The best way to reach me is by email anita.anand@utoronto.ca if not in person.

Reading List

January 4 Introduction and Philosophical Underpinnings

In this introductory class, we will discuss the overlap of corporate law and securities regulation in terms of the mandate of securities regulators and substantive areas of law such as take over bids, shareholder meetings and remedies. We will also discuss the duties of the board as this is a topic that is the foundation for many topics in this course and this area of law.

Ed Iacobucci, "Indeterminacy and the Canadian Supreme Court's Approach to Corporate Fiduciary Duties" (2009) 48 Canadian Business Law Journal 232

January 11 Structure of the Securities Regime Guest, Patricia Olasker

Securities Act Reference 2011 SCC 66 plus "Introduction" to *Securities Reference* book

Department of Finance Canada, "Background: Cooperative Capital Markets Regulatory System" (2014 and 2015) http://www.fin.gc.ca/n14/data/14-119_1-eng.asp and http://www.fin.gc.ca/n15/data/15-042_1-eng.asp.

Jeffrey MacIntosh, op. eds in the *Financial Post* (November 2014), online: <http://business.financialpost.com/fp-comment/the-regulatory-leviathan-ottawas-power-grab-in-the-securities-industry-is-sweeping-and-unprecedented-and-must-be-opposed>.

January 18 The Exempt Market

National Instrument 45-106 "Prospectus and Registration Exemptions" https://www.osc.gov.on.ca/documents/en/Securities-Category4/rule_20090918_45-106_3238-supplement.pdf (online only)

Vijay Jog, "The Exempt Market in Canada" (2015) University of Calgary School of Public Policy Research Papers, <http://www.policyschool.ucalgary.ca/sites/default/files/research/exempt-markets-jog.pdf>.

January 25 Disclosure Liability – Guest, Alan Lenczner

OSA ss. 130, 138 online: <http://www.ontario.ca/laws/statute/90s05>.

Kerr v Danier Leather Inc., 2007 SCC 44, 87 OR (3d) 398, 2007 CarswellOnt 6445. *Coventree Inc. (Re)*, [2011] 34 OSCB 10209, 2011 CarswellOnt 9804 (OSC) (para 1 – para 258) (re interpretation of materiality principles and case law)

February 1 Institutional Shareholders and Shareholder Democracy
Guest, Naizam Kanji

Denes et al, "Thirty Years of shareholder activism"
<https://lib.sandiego.edu/law/documents/event-services/Panel%203%20Denes%20Karpoff%20McWilliams.pdf>.

Globe and Mail article and related document by Canadian Coalition for Good Governance, entitled "Shareholder Involvement in the Director Nomination Process" (2015)

February 8 Takeover Bids – Guest, Sharon Geraghty

OSA, Part XX online: <http://www.ontario.ca/laws/statute/90s05>.

Canadian Securities Administrators, "Proposed Amendments to Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*; Proposed Changes to National Policy 62-203 *Take-Over Bids and Issuer Bids*" (2015) .

Anita Anand, CD Howe E-Brief "The Future of Poison Pills in Canada: Are Takeover Bid Reforms Needed?" (2015)

February 15 Reading Week

February 22 Dual Class Share Structures and *Magna*

Anita Anand, "Offloading the Burden of Being Public: An Analysis of Multiple Voting Share Structures" (draft paper will be posted to Blackboard)

Ed Iacobucci "Making Sense of *Magna*" and Anita Anand, "Was *Magna* in the Public Interest?" in 49:2 (Fall 2011) *Osgoode Hall Law Journal* 311.

February 29 Insider Trading and the Public Interest

OSA ss. 76 and 127 online: <http://www.ontario.ca/laws/statute/90s05>.

Nigel Campbell, Erin Hoult & David Badham, "Lesser Included Non-Offences? The Use of the Public Interest Power in *Re Donald*" (2014) 27 *Can J Admin L & Prac* 161.

Tom Atkinson & Cullen Price, "The Ontario Securities Commission's Public Interest Power: The Primacy of Principles" (2014) 27 *Can J Admin L & Prac* 205.

March 7 “Doing” Enforcement

OSA ss. 122, 126, 127 and 128 online: <http://www.ontario.ca/laws/statute/90s05>.

Mary Condon, “Rethinking Enforcement and Litigation in Ontario Securities Regulation” 32 Queen’s LJ 1.

Anita Anand, “Carving the Public Interest Jurisdiction in Securities Regulation” (2007) 57 UTLJ 293 (especially page 742 onward)

March 14 No Class

March 21 Regulators, Administrative Tribunals, and Bifurcation – Guest, Howard Wetston


OSA ss. 1.1, 143 online: <http://www.ontario.ca/laws/statute/90s05>.

The Hon. Coulter A Osborne, QC, Professor David J Mullan, Bryan Finlay, QC, “Report of the Fairness Committee to the Ontario Securities Commission” (March 5, 2004) online: http://www.investorvoice.ca/Research/Osborne_05Mar04.pdf. (recommendations)

Philip Anisman, “The Ontario Securities Commission as Regulators: Adjudication, Fairness, and Accountability,” in Anand and Flanagan, eds., *Proceedings of the 10th Queen’s Annual Law Symposium: Conflicts of Interest in Capital Market Structures* (Kingston, ON: Queen’s Annual Business Law Symposium, 2004).

March 28 Discussing and Prioritizing a Reform Agenda

In this class, we will discuss questions and other items that arose through the term that we did not have sufficient time to explore. We will also analyze potential reforms to securities law before discussing the final exam.



Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

